

Remarks Concerning the Amendments

The above amendments have been made to directly respond to the Office Action

Claim 10 has been amended to correct the antecedent basis issue...

SUMMARY OF THE OFFICE ACTION

Claim 10 has been rejected under 35 USC 112, second paragraph as lacking antecedent basis for a word.

Claims 10, 13 and 16 have been rejected under 35 USC 103(a) as unpatentable over U.S. Patent No. 5,538,502 (Johnstone) in view of U.S. Patent No. 6,240,564 (Te Kanawa).

RESPONSE TO THE OFFICE ACTION

Claim 10 has been rejected under 35 USC 112, second paragraph as lacking antecedent basis for a word.

Claim 10 has been amended to overcome this issue.

Claims 10, 13 and 16 have been rejected under 35 USC 103(a) as unpatentable over U.S. Patent No. 5,538,502 (Johnstone) in view of U.S. Patent No. 6,240,564 (Te Kanawa).

Applicant is extremely disturbed by the fact that amendments were previously enticed, and claims canceled, with the express understanding that the remaining claims would be allowed.

As with any rejection based upon art, it is necessary to first compare the literal language of the claims with the teachings of the primary reference to determine the differences between the art. This process is initiated in the following table.

CLAIM 10	JOHNSTONE or TeKanawa	COMMENTS
A post-operative chest support for a patient comprising:	A surgical chest dressing is constructed of a band of stretchable material having a pair of panels of non-stretchable material attached thereto, the non-stretchable panels biasing the side and breast tissue of a patient inwardly toward a sutured incision in the center of a patient's chest to support and substantially immobilize the patient's side and breast tissue and to minimize stress on the sutured incision.	
a chest encircling band of stretchable material of constant width and uniformly stretchable along the circumference of the	The system of Johnstone does NOT include an adjustable chest encircling band of constant width and uniformity.	The system is required to be shaped to the breasts and cleavage of the individual wearer/patient and band 68 is a fixed band of constant

band, wherein the band has a base tension while worn by the patient;		tension. The lack of tensioning means for the band is acknowledged in the rejection
a tensioning means located on a front surface of the band that is actuatable by the patient to vary the tension of the band between the base tension and another tension,	Te Kanawa is asserted to show the tensioning means 22 26. The device of Te Kanawa is a more of a fitting element to form fit a jersey, rather than apply post-surgical forces.	"...there is provided a garment characterised in that it has attached a holding means for aiding the securing of the garment by a person, wherein the holding means is attached to the garment in such a way that the forces resulting from the grasping of the said garment are distributed throughout the garment."
such that the band automatically returns to the base tension when the patient releases the tensioning means; and	The te Kanawa device cannot return to its base tension when released, as that would prevent the operation of the Te Kanawa device from form fitting the jersey, or providing its beneficial functions.	Te Kanawa states, "Referring to all the drawings, holding means 2, 22, 32, 42, 52, and 62, provide a stronger binding means for rugby players, reducing the risk of injury due to scrum collapse, often caused by incorrect or insufficient binding by players to other players." If the tension were returned to the base tension, the function of Te Kanawa would be destroyed.
wherein a first securing system fixes the support about a patient's chest at the base tension, and the tensioning means comprises at least a pair of handles at a base tension position that can move towards each other when pushed to adjust tension and be pulled away from each other to adjust tension,	There are no "pair of handles" at a base tension position. There is only a single handle 22 housed in the pocket.	This limitations is not taught by Johnstone in view of Te Kanawa. There is also no showing of even the single handle of Te Kanawa returning to a base tension, and no disclosure of two handles returning to a base tension.

the handles returning to the base tension position when pushing and/or pulling of the handles is stopped; and		
wherein the at least a pair of handles is located within pockets on the front of the <u>chest support</u> [vest].	As there is only a single handle, there can be no two handles located within pockets (PLURAL) taught by Johnstone in view of Te Kanawa.	

REMARKS CONCERNING THE PATENTABILITY OF CLAIM 10

The fact that my product has an "encircling band of stretchable material of constant width" is one of the key important factors (*along with shoulder straps ensuring a constant/non-movable position on the chest*) for being an effective **lateral sternum support**. These limitations are already in the language of claim 10 as: "...a chest encircling band of stretchable material of constant width and uniformly stretchable along the circumference of the band,..." The whole purpose of the product of Applicants is to prevent postoperative sternum complications such as sternal wound infections and dehiscence by keeping a constant encircling force on the chest that results in a lateral support of the sternum (*keeping the two sternum parts together for better healing*). In addition the purpose of the integrated handles gives the patient the possibility to increase the encircling support further and thereby give "counter-pressure" particularly during coughing where the internal thoracic pressure can rise dramatically up to 300mmHg.

It's imperative that the encircling material has a **constant width** (as recited in the claims) in order to give optimal lateral force on the sternum. A substantively varying width (which would alter local pressure when the width variation was substantial) would "interrupt" the encircling strength needed for giving lateral support to the sternum.

Neither Johnstone nor Te Kanawa even suggests the ability of the patient to temporarily adjust chest pressure in a post-operative environment.

To obtain the benefits of Johnstone, there is a fixed and steady tension provided by the garment.

To obtain the benefits of Te Kanawa, to protect the player, a tension must be increased and maintained. The two reference provide an opposite effect at opposed ends of the spectrum than that recited in the present claims. There are no "pair of handles," There are no pairs of handles in pockets (plural).

The rejection is clearly in error and must be withdrawn for multiple reasons.

REMARKS

The Applicant had previously followed the instructions of the Examiner and placed the allowable subject matter of claim 15 into independent form (amended claim 10) and has allowable claim 16 dependent from allowable claim 10, instead of 15 (now canceled).

The new rejection of the claims is clearly in error and must be withdrawn. The claims should definitely be allowed at this time. Before any action other than allowance is performed, Attorney for Applicant would appreciate the opportunity to discuss any new rejection. **The simple amendment to claim 10 does not provoke or allow the PTO from asserting provocation in the citing of new art and subsequent issuance of a final rejection.**

The application and claims are therefore in *prima facie* condition for allowance.

If the Examiner believes that there are any issues that can be clarified or resolved by a telephone communication, the Examiner is respectfully invited to the below attorney of record, Mark A. Litman, at 952.832.9090, during regular business hours.

Respectfully submitted,
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The undersigned hereby certifies that this Transmittal Letter and the paper or fee, as described herein, are being sent by facsimile transmission or deposited with the United States Postal Service FIRST CLASS POSTAGE PREPAID and is addressed to the Assistant Commissioner for Patents, Box: AAMENDMENT, PO BOX 1450, Alexandria, VA 22313-1450.

By: 

MARK A. LITMAN